"Preventing Harmful Restraint and Seclusion in Schools Act" (H.R. 4247)

This proposed federal legislation was introduced by Rep. George Miller and has passed the House. A companion bill was introduced in the Senate by Sen. Chris Dodd. The legislation has bipartisan support, but a significant number of Republicans dissented from the House committee report. Much of the legislation coheres with the requirements of Chapter 103; however, there are some differences.

I. Description of H.R. 4247

The bill would prohibit certain types of restraint (mechanical restraint, restraint that restricts breathing, etc.) and regulate seclusion (but only when locks are used). The bill would prohibit seclusion and restraint "solely for purposes of discipline and convenience." The bill would also restrict seclusion and restraint to circumstances in which all of these criteria are met:

- 1. The behavior poses an "imminent danger of physical injury" to self or others.
- 2. "Less restrictive interventions" would be "ineffective" in addressing the risk of physical injury.
- 3. Restraint or seclusion was conducted by staff maintaining face-to-face contact with the student (or in "direct visual contact" if face-to-face monitoring "significantly compromised staff safety).
- 4. Restraint or seclusion is conducted by staff who have completed a state-approved training program (or untrained staff in a "rare and clearly unavoidable emergency circumstance" due to trained staff unavailability), which also must be approved by the Secretary.
- 5. Seclusion or restraint lasts only so long as the imminent danger lasts.

The legislation would provide that time-out is not regulated. Likewise, the use of safety or therapeutic devices (such as medical equipment or school bus seatbelts) would not be regulated. The use of handcuffs by school resource officers would be regulated.

The legislation would prohibit the incorporation of seclusion and restraint as a planned intervention in an IEP. It would allow schools to use seclusion and restraint on children with disabilities who pose an imminent danger to self or others; however, school policies must be of general applicability and not tied to any one student. The committee report attempts to draw a distinction between a planned intervention (not allowed) and a crisis plan, a planned response to an unplanned emergency, which IEPs would be able to contain. I do not know whether this is a sustainable distinction.

The legislation would require notice to parents (verbally or electronically) on the day of the incident, with written notification to follow within 24 hours. The legislation does not describe the required contents of the notice.

The legislation would require, within two years of regulations promulgated by the Secretary, the Department to submit to the Secretary and publicly report an unduplicated count of instances of seclusion and restraint reported by LEA. The reporting would also require breakdowns of student demographic characteristics, the number of instances resulting in death or injury, and the number of instances performed by untrained staff.

Within a similar two-year timeframe, the Department would be required to submit to the Secretary a plan containing assurances that the Department has adopted minimum policies and procedures, has adopted an monitoring and enforcement mechanism, a description of those policies and procedures, and a description of plans to ensure schools and parents are aware of the required policies and procedures. Lack of compliance could result in withholding of funds under any U.S.D.E. program.

The rules, recordkeeping requirements, and reporting requirements would apply to Head Start programs. The legislation would not apply to private schools, unless the school receives support from the U.S.D.E. or serves students receiving support from any U.S.D.E. program (the IDEA, for example). The legislation would not apply to home school students. The legislation provides that protection and advocacy programs would have the authority to "investigate, monitor, and enforce" the legislation's requirements.

II. Comparison between the Proposed Legislation and Chapter 103

A. Areas of Similarity

- Both provide similar treatment of mechanical ("material")
 restraint, as well as similar exceptions for therapeutic and safety
 devices.
- 2. Both provide coverage of both students with and without IEPs.
- 3. Both require periodic staff training.
- 4. Both require notice to parents the day of an incident.
- Both provide that seclusion and restraint may not be used for routine discipline.
- 6. Both provide that seclusion and restraint may be used only as long as "reasonable" (Chapter 103) and "necessary" (proposed legislation).
- 7. Neither would regulate minor contact with a student, such as tapping the student on the shoulder to redirect her attention.

- 8. Both require considerations of less restrictive alternatives to seclusion or restraint.
- B. Areas where Chapter 103 may be more "protective" of student rights
 - 1. Chapter 103 covers all private schools, not just those receiving federal financial assistance.
 - Chapter 103 provides for more detail in recordkeeping and parent notices.
 - 3. Chapter 103 regulates seclusion where egress is restricted, not just locked rooms.
 - 4. Chapter 103 builds in a time for administrator oversight in seclusion, which is absent from the proposed legislation.
- C. Areas where the proposed legislation may be more "protective" of student rights.
 - 1. The legislation would require direct monitoring during seclusion, while Chapter 103 requires "adequate and continuous adult supervision."
 - 2. The legislation would cover contractors and school resource officers, while Chapter 103 does not.
 - 3. The legislation contains a public reporting requirement.
 - 4. The legislation does not allow for seclusion and restraint because of mere property damage, while Chapter 103 does.
 - 5. The proposed legislation would require written notice to parents in a shorter time period than Chapter 103.